

ARNHEM, 2 June 1948.

NETH-31

IN THE NAME OF THE QUEEN.

The Special Court in ARNHEM has passed the following sentence in the case of the <sup>Chief</sup> Public Prosecutor against

FRITZ WILHELM HERMANN FULLRIEDE,  
born 4th January in BREMEN (Ger)  
farmer,  
living at WILHELMSTAL (S.Africa),  
now detained in "AVEGOOR" detention camp,

ACCUSED.

The Special Court;

In view of the investigation held at the sitting;  
Having heard the demand by the Public Prosecutor;  
Having heard the accused who was assisted by  
DR. A.A.H.M. PLOCHG, barrister, ARNHEM;

Considering that the accused has been charged, as appears in the indictment after amendment at the sitting; that he in PUTTEN, at anyrate in GELDERLAND, in the beginning of October 1944, during the time of and in connection with the war of aggression begun by Germany against the Kingdom of the Netherlands on 10th May 1940, as Oberst in the German Wehrmacht, at anyrate in the active military service of or with the German enemy, intentionally, contrary to the laws and customs of war and for/of humanity, misusing his power and for authority in his above mentioned function or capacity, as retaliatory measures for an attack made in or near PUTTEN on the night of 30th Sept. -1st October 1944 on German soldiers in a motor car, caused some 600 men, at anyrate some hundreds, to be arrested by German troops under his command and had them handed over to the S.S. to be taken away, as a result of which these men with a few exceptions were deported to Germany where the majority of them died in horrible circumstances; had women, children and old people, at anyrate a great number of them, driven from their homes, and had about 100 houses, at anyrate a number of such, set on fire and destroyed;

Considering that the accused has stated at the sitting:  
"On the night of 30th September-1st October 1944 an attack was made in Putten on a German car in which two German officers and two German soldiers of the Hermann GOERING division were sitting. The officers were badly wounded; one was still able to drag himself to a farmhouse and died the next day, the other officer was carried off. At that time I was a commanding officer in the German Wehrmacht and Oberst of the Hermann Goering regiment which is a Luftwaffe regiment. I held this function during the whole action at PUTTEN. On 1st October 1944 I informed Von WUHLISCH, Chief of Staff of the Wehrmachtsbefehlshaber in the Netherlands, of the said attack. I then first received orders to surround PUTTEN and have all the inhabitants arrested. This was done by my orders by the German troops under me.



The men were put in the school and the women in the church. I released the women that evening and told them they must be back in the church again the next day. That same Sunday 1st October, I received orders from VON WUHLISCH as retaliatory measures for the aforesaid attack:

1. to shoot the guilty parties;
2. to burn PUTTEN DOWN, with the exception of the house belonging to the farmer who had taken in the wounded officer, while I could also spare the houses of pro-Germans;
3. to evacuate the women and children;
4. to deport (abtransportieren) the male inhabitants of PUTTEN aged 18 to 50.

Von WUHLISCH further told me in answer to a question that there would be a train next day in PUTTEN station to take away the men and that I must hand the latter over to the S.S. for this. I asked for a written confirmation of this order which was handed me that same night. My batman, FISCHER, is one of the men who saw that written order. The next morning, Monday 2nd October, the men aged 18 to 50 were collected on the market place. Then in the church where the women and children were I read out the order, which was translated by the police lieutenant OTTEN who is present at this sitting.

I further that day had the following retaliatory measures taken against the population of PUTTEN;

I had a number of houses in PUTTEN set on fire by the troops under me and I intentionally had some hundreds of men, about 400-500, between the ages 18 and 50 whom I had had arrested the previous day, handed over to the S.S. battalions to be taken away. I did all this by order of the Wehrmachtsbefehlshaber in the Netherlands. I had the women and children evacuated from that part of the village which was to be burned.

I think Von WUHLISCH said something more, like that the men would be taken to Germany for the Arbeitseinsatz. In any case I knew from the various bits of information I had that the men who were to be taken away would be taken to Germany.

On the evening of 2nd October a number of houses in PUTTEN were set alight by my orders, and I left PUTTEN towards dark when it was reported to me that the action in connection with the burning had been carried out. PUTTEN was still burning then.

I did not wish to bring the S.S., which had already arrived in PUTTEN on Sunday afternoon, into the action for I knew that the S.S. respected nothing or nobody. I knew that the order I had received was contrary to humanity. I thought the whole measure inhuman. I knew that during the PUTTEN action Germany was in a state of war with the Netherlands".

Considering that MARINUS GERARDUS OTTEN ~~Has-been-a-witness~~ stated at the sitting as a witness:

"I was a 1st Lieutenant in the Motor Police in PUTTEN when the PUTTEN action took place in the beginning of October. The Oberst who was in command of the German troops there was the present accused. After the attack on the car containing German officers, which took place on the Saturday-Sunday night (30th-Sept.-1st. Oct), the whole population was brought together on the market square on Sunday 1st October. The men were shut up in the school, the women and children in the church. That evening the women and children were released but had to return next day. The accused was present at and in the neighbourhood of the market all the time that this action was going on. On the Monday morning, 2nd October, the men were formed up on the market, the women, who had brought food, having to remain in the church.



I received orders from the accused to go into the church. There he read out the order by the Wehrmachtsbefehlshaber in the Netherlands which contained what retaliatory measures were going to be taken, and I translated this order. Among other things appeared in the order that the male population between 18 and 50 was to be carried off and PUTTEN burned down. The accused gave orders to take the male population away and to set a number of houses on fire. The men who were gathered on the market-place were taken to the station by German troops and taken off by train. The women and children had to evacuate those houses which were to be burned, and this was done. Setting fire to the houses started at 5 o'clock. I myself saw 5 houses set alight. I saw the accused leave towards 7 o'clock; PUTTEN was still burning then. After then some more houses and also a cinema were fired. At 1 o'clock a café was also set alight. I got the impression that the firing took place in a sort of fury. They were lawless slack-disciplined soldiers, wanton and also probably quite drunk, who were at work."

Considering that Jhr. MATTHIEU LAMBERT VAN GEEN has stated at the sitting as a witness:

"I am burgomaster of PUTTEN at the present time. From an investigation I have had undertaken I have found that with the retaliatory measures taken against PUTTEN in the beginning of October 1944, 499 people were taken off to Germany via AMERSFOORT, and during the action 98 premises, including 85 houses, were burned down. I myself on the evening of 2nd. October 1944 saw houses standing in flames."

Considering that NELLIE ELIZABETH JACOBA MAAS, wife of C.C. GOLDEWAGEN, has stated at the sitting as a witness:

"I was there when PUTTEN was burned. This started at 5 o'clock on 2nd October and lasted till late in the evening. The accused paid me a visit on 2nd October and told me then that he thought the order inhuman. I asked him what was going to happen to the men who had been taken away and he said that they would have to work either in AMERSFOORT or Germany".

Considering that HENDRIK WILLEM FRERICKS has stated at the sitting as a witness:

"At 4.30 o'clock on Sunday 1st October I and another were fetched out of my house in PUTTEN by German soldiers. We were then put into the school with the crowd that was there. Next morning we were all placed together in the market. Through a chain of circumstances I escaped the deportation and myself saw a number of houses set alight by German troops. This began about 5 o'clock on 2nd October and lasted the whole evening;"

Considering that a statement dated 3rd March 1947 made out on oath of office by ALBERT KUILMAN, State detective inspector 2nd class, (prod. 69) which has been read out at the sitting contains among other things as a statement made to the above by:

1. GIJSBERTUS VEENBRINK, JAN JANSSEN, JURJEN LANGE, each individually and to the same effect, that on the evening of 2nd. October 1944 they saw a number of houses set on fire by German troops;
2. WOUTER VAN DE KLEUT, that on the evening of 2nd. October 1944 he saw some soldiers belonging to the Hermann Goering troops set fire to houses in PUTTEN;

Considering that a statement dated 17th March 1947 made out on oath of office by ALBERT KUILMAN, State detective inspector 2nd class, (prod. 78) which has been read out at the sitting, contains among other things as a statement made to the above by KARL PETER BERG:



"At the time of the action in PUTTEN I was commandant of the Polizeiliches Durchgangslager in AMERSFOORT. On 2nd October 1944 Oberst PAUSINGER of the Streifendienst (patrol service) and a Luftwaffe 1st Lieutenant came to me and asked if I had room for about 600 prisoners from PUTTEN who had been arrested by the wehrmacht. They told me it would be only for a few days. The prisoners arrived in the AMERSFOORT camp at about 4 p.m. that same day. They were guarded by an S.S. battalion. I later received orders to make up a transport of about 1400 persons for NEUENGAMME and the prisoners from PUTTEN must be among them. This transport left for Germany on the 11 th. or 12 th. October 1944.

A few days ~~later~~<sup>after</sup> the prisoners from PUTTEN arrived in AMERSFOORT, I had to release some of them. These were not taken off to Germany with the others";

Considering that a statement dated 16 th. February 1947 made out on oath of office by ALBERT KUILMAN, State detective inspector 2 nd. class, ( prod. 68 ) which has been read out at the sitting, contains among other things as a statement made to the above by:

1.) GERRIT HORSELING, 2.) SAMUEL SCHAFTENAAR, 3.) AALTJE ARENDSE, 4.) GIJSBERT van BEEK, 5.) HENDRIK KLAASSEN, 6.) JACOB SCHUITEMAN, 7.) HENDRIKUS van den BERG, 8.) DIRK JACOBUS MEILING, 9.) GIJSBERT JANSSEN, 10.) AART JANSSEN, 11.) Rev. PIETER de RUIG ; who each stated that they had been arrested on 1 st. October 1944 by German soldiers, that on 2 nd. October 1944 they with other inhabitants of PUTTEN were taken to AMERSFOORT camp and with these were taken from there a few days later to NEUENGAMME, and that they were in German imprisonment till liberated at the end of the war;

while the statements by GERRIT HORSELING, SAMUEL SCHAFTENAAR and AALT ARENDSE to the interrogator further contain, each individually and to the same effect, that they were taken to AMERSFOORT and to Germany together with some hundreds of other inhabitants of PUTTEN;

Considering that a letter read out at the sitting dated 20th April 1946, signed RUDOLF FISCHER, and addressed to "The Military Court, The Hague, Holland" (prod.2) contains among other things the following:

"I was Oberst FULLRIEDE's orderly from 1939 and know all about the affair (PUTTEN). Oberst FULLRIEDE received orders to burn the town down, shoot the male inhabitants if guilty and send the other male inhabitants between 18 and 50 years of age to Germany to work, and to evacuate the women and children;"

Considering that a letter from the Netherlands War Crimes Commission, HERFORD, BAOR 15, dated "HERFORD, 25th April 1948", and signed by F.A. GROENINX VAN ZOELLEN and the J.Th. MEKERS, which has been read out at the sitting contains among other things as a statement by both signatories, that the widow CAROLA SCHELLER had handed them a diary for 1944 consisting of 28 pages and told them that this diary belonged to FRITZ FULLRIEDE, at that moment detained in the Netherlands the said letter also containing a statement by DR. J.W. des TOMBE, Chief Prosecutor of the ARNHEM, Special Court, that on 26th April 1948 he took over the diary in question from the writers;



Considering that a diary consisting of 28 pages and attached to the aforesaid statement, which diary was read out at the sitting, contains among other things (pag.25):

"2nd October. By order of Berlin via W.B.N. all men 17-50 years of age to be deported to Germany for Arbeitseinsatz, all women evacuated and PUTTEN burned down. The men made over to the S.S. for deportation and dispatch then in the church informed the women and old people of the order for the burning. However allowed them 4 hours longer so that they could take the most necessary things with them. Great wailing and running to and fro ensued. Entirely excluded part of the village from being burned for the old and sick and instead of some 600 houses only blew up and burned 87";

Considering that the accused has declared at the sitting: "The written diary I am shown here was written by me later in hospital from notes";

Considering that it is a fact of general knowledge that the war which Germany began against the Netherlands on 10th May 1940 was a war of aggression and that every one of the education and position of accused, except in special circumstances which in this instance have not appeared at the sitting, must necessarily have known this;

Considering that it is also a fact of general knowledge that international law, especially the Rules of Landwarfare in article 46, lays the duty of respecting the honour and rights of the family and private property in the occupied territory on the occupant, and that international law also, especially in article 52 of the said Rules of Landwarfare, forbids the occupant to requisition personal services from the inhabitants of the occupied territory except for the needs of the army of occupation, which prohibition contains that of carrying away the inhabitants of the occupied territory to the country of the occupant; that it is also a fact of general knowledge that, except in special circumstances which in this instance have not appeared at the sitting, everyone of the education and with the function of the accused is in substance acquainted with this rule of international law;

Considering that it is moreover a fact of general knowledge that the burning down of part of a village, having women and children evacuated and a great number of men carried away, a reasonable chance existing here that the latter will be taken on further to the country of the occupant, from the very nature of the acts themselves runs counter to all rules of humanity and that also, except in very special circumstances which in this instance have not appeared at the sitting, everyone of the education and with the function of the accused who gives orders for the aforesaid acts must necessarily be aware that these orders are contrary to the elementary claims of humanity, which indeed is confirmed by the accused's own statement;

Considering that the facts and circumstances appearing in the preceding evidence and the facts and circumstances of general knowledge of causal facts and circumstances on the grounds of which the Special Court has been convinced and considers proved that the accused committed that with which he is charged, on this understanding:

∟ named above constitute an equal number



that he in PUTTEN, in the beginning of October 1944, during the time of and in connection with the war of aggression begun by Germany against the Kingdom of the Netherlands on 10th May 1940, as Oberst in the German Wehrmacht intentionally, contrary to the laws and customs of war and of humanity, misusing his authority in his above-mentioned function, as retaliatory measures for an attack made in PUTTEN on the night of 30th September-1st October 1944 on German soldiers in a motor car, caused some hundreds of men to be arrested by German troops under his command and had them handed over to the S.S. to be taken away, as a result of which these men with a few exceptions were deported to Germany; had women and children driven from their homes, and had a number of houses set on fire and destroyed;

Considering that where illegitimacy as well as the intent of illegitimacy form elements of the declaration itself that the charges have been proved, the Court wishes in this connection to discuss the defences brought to bear against the declaration that these elements of the indictment have been proved as being defences against one part of this declaration;

Considering that in this connection it has first been advanced, that the actions as these were settled upon by the accused are not contrary to the laws and customs of war and of humanity, because they would be justified by international law as reprisal measures;

Considering with regard to this that the Court will here first put the case that where international law, and especially the Rules of Land Warfare, gives no powers and rights to the occupant but only regulates and curtailment of the de facto exercise of power, the circumstances that certain acts of an exercise of power are not forbidden does not for that reason make these acts positively legitimate, but international law only attaches the legal consequence to the non-prohibition of these acts that he who causes such cannot be criminally called to account for them, and that it can therefore only be negatively said of such acts that they are not contrary to what has been positively regulated by international law;

Considering therefore that it must now be examined whether international law recognises an exemption from penal liability for the de facto actions by the accused as these have been declared proved, on the grounds that the exercise of a non-prohibited reprisal measure is here concerned, it being the opinion of the Court that carrying out of the order as this has been declared proved, must in this case be considered as a whole;

Considering that the Court does not share the opinion that the occupier of the Netherlands can no longer appeal to the protection of international law in this instance because Germany herself begun the war with the Netherlands contrary to international law;

Considering that, even if a contradiction may be found in the fact, that the same international law which forbids a war of aggression, nevertheless when such a war is being carried on grants protection to him who violated international law by beginning that war, it is the opinion of the Court that international law, in so far as it regulates the way a war and an occupation must be conducted still had unabridged force and full validity during the second world war, and that the contradiction arising therefrom is

-a result-



a result of the state of imperfection in which the international community found itself at the time the acts declared proved were committed, which imperfection state has to be accepted by the judge as the existing law;

Considering that it is the opinion of the Court on the aforesaid grounds that the fact that Germany began the war contrary to international law can in the existing relations have no influence when answering the question as to whether the occupier of the Netherlands can still appeal to the protection of international law for his own advantage;

Considering that the Court cannot concur either in the view which says that the German occupant, who himself in every way violated the laws and customs of international law in his conduct of the war and when carrying out the occupation, for that reason can no longer make any appeal to the protection of international law when actions are concerned which were taken by the occupant for his own safety as a reaction to acts committed by inhabitants of the occupied territory;

Considering with regard to this that in the opinion of the Court this position cannot be accepted in its generalization but that the question which poses itself here must be reviewed in each case as it arises; that the Court does consider this position to be correct where it concerns acts by the inhabitants of the occupied territory which form a direct defence against a violation of international law by the occupant, which acts are then a justifiable defence which the occupant may not then punish or answer by reprisals; that this same cannot however be said of all that done by an occupant in his conduct of the war and when carrying out the occupation, even if it concerns an occupant who with regard to this violates international law in many respects;

Considering now that where it has in no way been established that the attack on the German officers in PUTTEN was a defence by the inhabitants of the occupied territory against an act committed by the enemy contrary to international law, the accused can fully appeal to the grounds for exemption from penal liability recognised by international law;

Considering that it must now be examined whether the accused's acts which have been declared proved could be carried out with impunity on the grounds of international law, because a non-prohibited reprisal measure is concerned here;

Considering that the Court answers this question in the negative;

Considering that it is a fixed rule of international common law that if it is wished with impunity to take reprisal measures such as those declared proved, which reprisal measures affect innocent people for deeds not originating with them but with certain individual fellow-citizens the following two conditions must certainly be complied with: *last resource*

1. first, that the reprisal measures must be an ~~an extreme means~~ *last resource* to protect the safety of the occupant and therefore only to be applied if the actual perpetrators of the acts which give rise to reprisals cannot be found and punished;
2. then, that there must be a due proportion between the act which gives rise to reprisal measures and the reprisals



measures themselves;

Considering that in the opinion of the Court neither of these two conditions was complied with in the case under consideration;

Considering that as far as the first condition is concerned, it can in no way be said of the acts declared proved that they were a last resource, for before taking the reprisal measures it was not waited till a proper investigation as to the perpetrators of the attack had led to no result, on the contrary the order for the reprisal measures was given almost immediately after the attack, while the carrying out of that order was begun the very same day and completed the next, and in no single respect has it appeared that there was an urgent need to proceed immediately to take measures against innocent persons before waiting for the result of a proper inquiry;

Considering with regard to the second condition which a reprisal measure must comply with if it wishes to remain unpunished, that even if it is not always possible to lay down the proportion demanded in such a simple way it is the opinion of the Court that in any case there is no proportion of any sort between the attack on two officers on the one hand and on the other the burning to the ground of a part of the village, the evacuation of women and children, and the deportation of a large part of the male population to the country of the occupant when it could be expected that the situation for the men concerned would be very bad there;

Considering that on the above grounds it is the opinion of the Court that the acts declared proved did not comply with the conditions laid down by international common law for a non-punishable reprisal and that therefore international law recognises no exemption from penal liability for these acts;

Considering that accused has further advanced, that under the given circumstances the acts caused by him and declared proved were legitimate because he acted in a state of distress, for by acting as he did he best served the interest of the population of PUTTEN as when carrying out the order he was able to modify it to an important extent, while if he, the accused, had not partially carried out the order another would have executed it in all its harshness and severity, that therefore by acting thus he was able to prevent the population of PUTTEN from suffering a still greater disaster;

Considering that the Court, although it grants that under certain circumstances the state of distress of others than the author can also justify a criminal action, in this case rejects the appeal to a state of distress on the following grounds;

Considering in the first instance that the appeal to a state of distress will not hold here for the reason that for a state of distress which would justify actions such as those declared proved it is demanded in the first place that the disadvantage which would arise if the criminal action was refrained from could not be prevented otherwise than by carrying out that criminal action;

Considering now with regard to this, that it has in no way been established that this condition was complied with; that it has not appeared indeed that the accused could not first have waited a few days before executing the order while there was still a chance that the perpetrators could be found; that neither

-has-



has it appeared that he protested against the order in any way, or that he made attempts to induce his superiors to alter the order, which, in view of his very independent and very successful proceedings in other and purely military matters, was an expedient he could certainly have made use of;

Considering further, that the Court moreover rejects this appeal to a state of distress because the carrying out even in a mitigated form of such an illegitimate order as the one under discussion, the carrying out of which signified an immediate and direct attack on the rights of property as well as on the family rights and liberty of many citizens, can never be justified by the circumstance that were the accused not to have done so another would have executed the order in all its harshness and severity-granting that this latter would have been the case and the Court being willing to accept that in any case the chance of it existed;

Considering that such a justification for the carrying out of an order of that sort can then only be accepted if the mitigation in the execution of it go far that the legal interest of those affected by the carrying out of such an order must be considered as being subordinate to the legal interest of others which is made safe by its being carried out, so that it may be demanded of those whose legal interests are affected by such carrying out that they relinquish these legal interests in order to preserve those of others

Considering that from the declaration of what has been declared proved, and from what has appeared at the sitting concerning this it follows that such relations did not in any way present themselves for it cannot indeed be said that the great and important legal interests of many citizens which were violated by the accused's actions which have been declared proved, were subordinate to the legal interests of others, the violations of which was prevented by the accused carrying out the order;

Considering, moreover, that organized justice would in this respect lose every protection if anybody who carried out thoroughly illegitimate orders with some, perhaps even important, mitigations, could justify himself with an appeal to the circumstances that should he not have done so another would have carried out the order even more rigorously;

Considering that on the said grounds this appeal to a state of distress must therefore be rejected;

Considering that Counsel has appealed to the state of distress in another sense, namely, that had the accused not carried out the order he would have exposed himself to the greatest risks;

Considering with regard to this, that this appeal must be rejected from the very fact that it lacks a de facto foundation, as the accused has expressly stated that he personally could have avoided carrying out the order in a very simple way without exposing himself to serious danger, which moreover is confirmed by the very independent attitude he was always able to take up with regard to his superiors;

Considering, furthermore, that even had this been otherwise the danger run by the accused, even danger to his life, could in the Court's opinion in no way have justified his actions as these have been declared proved;



Considering that international law lays a special legal duty on the occupant ~~of~~ to protect the property, liberty and family rights of the inhabitants of the occupied territory, by which duty it can alone be prevented that the inhabitants of the occupied territory give themselves over to complete lawlessness, and that for this reason anyone who acts in the name of the occupant is not free to rate his own life higher than the legal interests of so many civilians, which interests were here in play and with the protection of which he happened to be the one charged;

Considering, further, that from all that which has been weighed above, and especially from the declaration that it has been proved, it follows that the Court does not share Counsel's opinion that at the time when the accused committed the actions declared proved no fixed and specified standards existed according to which he should have acted and that the standard, thus not only the threat of punishment, was itself only fixed later, as the accused/indeed in fact violated rules of international law which were already in force at the moment he committed the actions declared proved;

/ by his actions

Considering that <sup>Consequently</sup> ~~thus~~, all the defences which would attack the incompatibility with the laws and customs of war and of humanity of the de facto actions declared proved must be rejected;

Considering that it must finally be examined whether the defence is correct that the accused thought in good faith, even if objectively seen incorrectly, that by thus acting he did the best which was possible in the given circumstances and that therefore the intent of illegality was lacking as far as he was concerned;

Considering that the Court judges this defence already sufficiently refuted by the evidence which has been weighed concerning this;

Considering that the Court wishes to add here that from the very nature of the actions good faith on the part of a person of accused's education and position cannot be accepted with regard to actions such as those declared proved, and that the accused would have to show this good faith which has not been done;

Considering that, on the contrary, from the accused's own statements and reactions, such as his statements to witness MAAS, his remark that he at first wanted to have nothing to do with the matter and wanted to report sick for which reason he made his batman fetch a doctor's certificate, as also his attempt to soften the most cruel edges of the order, all show in the clearest fashion that at the time of the actions declared proved he the accused, was thoroughly aware that also in the form in which he carried them out the measures were not right and justifiable;

Considering that the Special Court does not deem proved anything more or otherwise charged against the accused than has been declared proved above;



Considering that in particular the Court does not deem proved that as a result of accused's actions the majority of the men deported to Germany died in horrible circumstances;

Considering with regard to this, that where it could not reasonably be expected by someone in the accused's situation that the deported men would be put into a concentration camp in Germany, and where it has appeared that the death of the majority of these men was a result of their being in the concentration camp, that result cannot in the criminal sense be called a result of the actions by the accused as these have been declared proved;

Considering that what has thus been declared proved constitutes the crime of:

"During the time of the present war before 15th May 1945 when in the ~~active~~ military service of the enemy being guilty of any war crime and any crime against humanity as expressed in article 6 under (b) and (C) of the Charter of the London Agreement of 8th August 1945 promulgated by Royal Decree of 4th January 1946 (Stat. bk. G 5), committed several times, which crimes also comprise the elements of acts punishable according to Netherlands law;" provided for and made punishable in articles 27 a and 28 of the Extraordinary Penal Law Decree, and article 57 of the Penal Code;

Considering that what has been declared proved comprises the elements of the following acts punishable according to Netherlands law:

- a. by misuse of authority intentionally inciting deliberate arson through which there is fear of common danger to property, committed several times;
- b. by misuse of authority intentionally inciting the deliberate and illegitimate destruction of any property belonging wholly or partially to another, committed several times;
- c. complicity in kidnapping by intentionally providing the means thereto, committed several times;
- d. during the time of the present war intentionally exposing another to deprivation of liberty by or on behalf of the enemy, committed several times, this act in several cases having resulted in a loss of liberty for more than one month;
- e. by misuse of authority intentionally inciting the "by force illegally compelling another to do something", committed several times;

which crimes have been provided for and made punishable in articles 47, 48, 57, 157, 284 and 350 of the Penal Code, and in articles 1, 11, 26 and 28 of the Extraordinary Penal Law Decree;

Considering that the accused is therefore punishable, no circumstances having appeared which would remove or exclude his liability to punishment;

Considering with regard to the measure of punishment to be inflicted on the accused, that in the opinion of the Court very extenuating circumstances can be advanced in his favour;

Considering indeed that it can be taken as established that the said order did not originate with the accused, that the accused carried out this order only partially and with great reluctance, and that he made many successful attempts thereby to mitigate its execution, although the Court considers



it incomprehensible and at the same time irresponsible on the accused's part that although commiserating to a certain extent with the fate of PUTTEN and its inhabitants he left PUTTEN at about 7 p.m. on the evening of 2nd October 1944 when the burning was still going on in full force and without there having appeared any necessity to do so, and this when he himself has stated that there were too many young soldiers then present whose discipline had begun to weaken in connection with the war situation;

Considering that for the aforesaid reasons, and in spite of the extremely sad consequences his actions had for PUTTEN; the Court judges that grounds exist to impose on the accused the mild punishment to be announced below;

Considering that for the aforesaid reasons the punishment to be announced below is in agreement with the nature of the act committed and the circumstances under which it was committed as these have appeared at the sitting;

In view further of articles 27, Penal Code and articles 2,3, and 7 b of the Extraordinary Penal Law Decree;

Administering the Law;

Declares the accused guilty of the acts qualified and declared proved above and therefore punishable;

Sentences him on that account to Two Years and Six Months' imprisonment;

Decrees that the time passed in detention by the condemned since 10th May 1946 be subtracted in full when serving this sentence of imprisonment;

Declares not proved anything more or otherwise charged against the accused than has been declared proved above;

Acquits him of such.

Ex officio grants the accused leave to appeal against this sentence.

DR BARON J.A.G. DE VOS VAN STEENWIJK  
DR. PROFESSOR D. van ECK  
RBar - Admiral K. van ALLER

President,  
Judge,  
Military Judge,

in the presence of  
DR. H.H. KIRCHHEINER

clerk of the  
Court,

and pronounced at the public sitting of the aforesaid Court on 2nd July 1948.

S/H.H. KIRCHHEINER.

S/de VOS van STEENWIJK  
van ECK  
K. van ALLER.